

REMARKS/ARGUMENTS

Claims 1-4 and 6-33 remain pending herein.

The applicant thanks Examiner DeMille for the courtesies extended during the telephone interview conducted on September 9, 2003. The substance of the discussion during that interview is incorporated in the following remarks.

Claims 1-4, 6-10, 13-19 and 22-29 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,251,089 (Kuznets '089).

The May 21, 2003 Office Action includes a statement that Kuznets in column 11, lines 50-57, column 12, lines 27-31, Figs. 5a, 6b and 9a discloses a vibrator. The disclosure in column 11, lines 50-57 of Kuznets '089 relates to a device 150 (see Figs. 5a and 5b) in which a shaft 154 rotates, and the base 168 and the massage elements 170 rotate with the shaft 154 to perform a "type I" movement (i.e., rotational movement of the massage head referred to in column 1, lines 45-47). When the locking mechanism 186 is locked, the housing 166 does not rotate, whereby each of the massage elements 170 is provided with an active reciprocal arc movement, as indicated in Fig. 5a by the arrow 178 and the broken lines (as confirmed in column 10, lines 58 and 59). Thus, each of the massage elements 170 performs a rotational type I movement superimposed with a linear reciprocal arc movement (column 11, lines 52-55). The disclosure in Kuznets '089, column 12, lines 27-31 relates to reciprocal arc movement in the device shown in Fig. 9a, in which upon rotation of the shaft 254, the massage elements 270 are provided with a rotational type I movement as well as a passive reciprocal arc movement.

Such movement as disclosed in Kuznets '089 is distinct from the vibration recited in the present claims. In addition, claims 1, 7 and 15 have been amended as set forth above to even further distinguish the claimed subject matter from the disclosure in Kuznets '089, by reciting that the vibrator is coupled to opposite ends of the fingers, the vibrator generating vibrations which cause the vibrator to vibrate, those vibrations being transmitted from the vibrator to the opposite ends of the fingers and through the fingers to the free ends of the fingers. As discussed during the interview conducted on September 9, 2003, Kuznets '089 does not disclose or suggest such a vibrator. In particular, as discussed in the September 9, 2003 interview, Kuznets '089 does not disclose a vibrator which generates vibrations which cause the vibrator to vibrate, and fingers to which those vibrations are transmitted from the vibrator and through which those vibrations travel from the opposite ends of the fingers to the

free ends of the fingers as recited in claims 1, 7 and 15. The Applicant appreciates the indication by Examiner DeMille during the September 9, 2003 interview that these features recited in claims 1, 7 and 15 appear to overcome the rejection over Kuznets '089.

Regarding claims 23, 26 and 30, during the September 9, 2003 interview, it was respectfully noted by the undersigned that each of those claims recites that the fingers are "non-rotating fingers", thereby distinguishing from the rotating fingers disclosed in Kuznets '089. The Applicant appreciates the indication by Examiner DeMille during the September 9, 2003 interview that such recitation in claims 23, 26 and 30, from which claims 24, 25, 27-29 and 30-31 each ultimately depend, distinguishes over Kuznets '089.

Reconsideration and withdrawal of this rejection are requested.

Claims 11, 12, 20 and 21 were rejected under 35 U.S.C. §103(a) over Kuznets '089. The Office Action includes a statement that a choice of copper for the massage elements disclosed in Kuznets '089 would have been an obvious choice. Any such modification of Kuznets '089 would not result in a device which renders obvious or anticipates any of the subject matter covered by claims 7 and 15, from which each of claims 11, 12, 20 and 21 ultimately depend. Accordingly, reconsideration and withdrawal of this rejection are requested.

Claims 1-4 and 6-33 were rejected under obviousness-type double patenting over claims 1-26 of U.S. Patent No. 6,309,365 (Lacey '365) in view of U.S. Patent No. 5,511,270 (Eliachar '270).

Submitted herewith is a Terminal Disclaimer relative to Lacey '365.

Reconsideration and withdrawal of this rejection are requested.

In addition, during the September 9, 2003 interview, there was a discussion regarding U.S. Patent No. 3,585,990 (Blachly '990). It was respectfully noted by the undersigned that Blachly '990 fails to disclose or suggest fingers which define a head-receiving space as recited in claims 1, 7 and 15.

In addition, during the September 9, 2003 interview, there was a brief discussion regarding U.S. Patent No. 6,450,980 (Robbins '980). It is respectfully noted that Robbins '980, like Kuznets '089, fails to disclose or suggest a device which includes a vibrator which is coupled to opposite ends of resilient fingers. Moreover, Robbins '980 fails to disclose or suggest a vibrator which generates vibrations which cause the vibrator to vibrate, and fingers to which vibrations are transmitted from the vibrator and through which those vibrations

travel from the opposite ends of the fingers to the free ends of the fingers as recited in claims 1, 7 and 15.

In view of the above, claims 1-4 and 6-33 are in condition for allowance.

If the Examiner believes that contact with Applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call Applicants' attorney at the phone number noted below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,

September 22, 2003

Date



Kevin C. Brown
Reg. No. 32,402

KCB:jms

BURR & BROWN
P.O. Box 7068
Syracuse, NY 13261-7068

Customer No.: 025191
Telephone: (315) 233-8300
Facsimile: (315) 233-8320